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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HARRY EUGENE FLYNN
ROBERT O. MARTIN
CHARLES A. NATALIE

Appeal 2009-005741
Application 10/670,981
Technology Center 3600

Before JAMES T. MOORE, *Vice Chief Administrative Patent Judge*,
SALLY GARDNER LANE and MICHAEL P. TIERNEY, *Administrative
Patent Judges*.

MOORE, *Vice Chief Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Harry Eugene Flynn, Robert O. Martin, and Charles A. Natalie (Appellants) seek our review under 35 U.S.C. § 134 of the Examiner's decision rejecting claims 12, 13, 14, 28 and 29. Claims 1-11 and 15-27 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b). We AFFIRM-IN-PART.

THE INVENTION

Appellants' claimed invention is directed to a piping elbow having a removable liner. Such elbows, when used with, e.g., high temperature, particulate-laden, or corrosive fluids, frequently need an appropriate liner which is corrosion- or abrasion-resistant. Spec. 1, ll. 9-17. Claim 12, reproduced below, is representative of the subject matter on appeal.

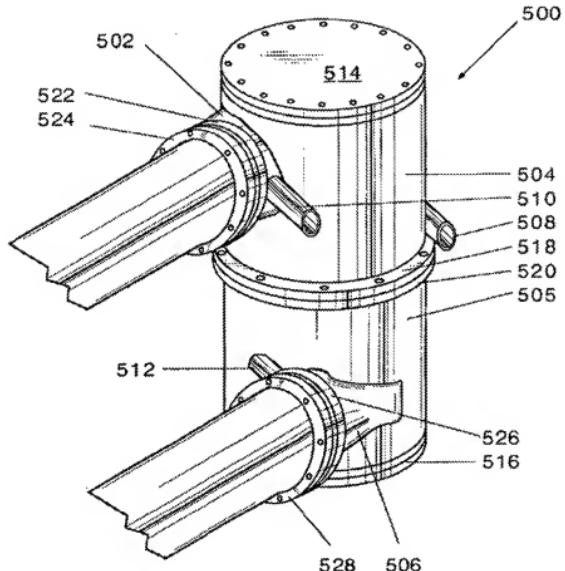
12. A piping elbow, comprising:

a substantially cylindrical body having a first end and a second end, wherein at least one of the ends is removably attached, and wherein the body contains a removable liner;

a tangential inlet attached to the body near the first end having a diameter smaller than the diameter of the body, wherein the tangential inlet contains a removable liner; and

a tangential outlet attached to the body near the second end having a diameter smaller than the diameter of the body, wherein the tangential outlet contains a removable liner.

In this instance, Figure 5 from the Specification helps conceptualize the claimed invention.



THE EVIDENCE

The Examiner relies upon the following evidence:

Forman	US 255,427	Mar. 28, 1882
Jacocks	US 2,226,494	Dec. 24, 1940
Cocchiara et al.	US 4,301,651	Nov. 24, 1981
Carty et al.	US 4,554,721	Nov. 26, 1985

THE REJECTIONS

Appellants seek review of the following rejections:

1. The Examiner rejected claims 12-14 under 35 U.S.C. § 103(a) as being unpatentable over Cocchiara, Jacocks, and Carty.
2. The Examiner rejected claims 28 and 29 under 35 U.S.C. § 103(a) as being unpatentable over Cocchiara, Carty, and Forman.

ANALYSIS

With regard to Rejection 1, the Appellants argue that the combination of Cocchiara, Jacocks, and Carty would not have rendered the claimed invention obvious to one of ordinary skill in the art at the time the invention was made. Among other issues raised, the Appellants urge that the liner of Cocchiara is not meant for abrasive materials and is permanent. (Br. 6).

We note that the Examiner found Carty to teach an elbow with a replaceable ceramic liner, for the ease of replacement of worn liners. (Rej. 4)(Carty 2:50-55; 4:27-32). The Appellants have not provided evidence that this is incorrect, but argue that Carty does not suggest how the removable liner in Carty could be used in the claimed arrangement of inlets and outlets. (Br. 6-7). To the extent that the Appellants are arguing that one of ordinary skill in the art, having regard for the disclosure of a liner of Carty, could not fashion a removable liner for other geometric shapes, we note that there is no persuasive evidence of record to support such a contention that the level of skill is so low. Accordingly, this first argument is unpersuasive.

The Appellants next argue, vis-a-vis claim 13, that the inlet liners are inserted into a cavity in the body liner, which acts to hold the body liner into place. (Br. 7-8). The Examiner points to Cocchiara, Figure 13, and finds that Cocchiara describes inlet and outlet liners extending into the body liner. (Ex. Ans. 10-11)(Cocchiara Fig. 13; 8:49-53). It appears to us that the Examiner is correct, especially as line 42 extends into the body liner. Accordingly, this argument is also unpersuasive.

The rejection of claims 12-14 is therefore affirmed.

With regard to Rejection 2, the Appellants argue that claims 28 and 29 require the piping elbow to comprise “substantially identical” components, and that the shell halves of Forman are not “substantially identical.” (Br. 9-10).

The Examiner notes that Forman’s components A and B, although not identical, can be reasonably considered “substantially identical.” They each are nearly hemispherical and have tangential inlet-outlets. (Ex. Ans. 12).

Although this is a close call, we agree with the Appellants. They interpret “substantially identical” as being interchangeable. (Br. 9-10). While the Specification does not go so far as to use that word, the actual text does note at page 8, lines 11-13 that the halves are in a reverse mirror relationship and references simplicity and ease of manufacture. Therefore, we accept the Appellants’ position that the halves must be considered to be interchangeable for purposes of claims 28 and 29.

Forman’s halves have different attachment fittings and could not be interchanged. *See, e.g.,* Fig 3, reference letters J, K, G, I and E and F. We

Appeal 2009-005741
Application 10/670,981

conclude, therefore that the halves are not “substantially identical” as we, and the Appellants, interpret that term.

The rejection of claims 28 and 29 is therefore reversed.

DECISION

The decision of the Examiner to reject claims 12-14 is AFFIRMED.

The decision of the Examiner to reject claims 28 and 29 is
REVERSED.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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